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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051757
Party	Defendant Loops, LLC
Correspondence Address	Loops, LLC 7152 Everett Road, PO BOX 2936 Ferndale, WA 98248 UNITED STATES
Submission	Answer
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Date	12/30/2009
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LOOPS LLC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

PHOENIX TRADING, INC., dba
AMERCARE PRODUCTS INC, a Washington
corporation

Petitioners,

vs.

LOOPS LLC, a Delaware limited liability
company,

Registrant,

CANCELLATION NO.: 92051757

Mark: "Designed for Prison Safety"
Reg. No.: 3,424,838

Mark: Trade Dress
Reg. No.: 3,430,304

Mark: Trade Dress
Reg. No.: 3,430,305

ANSWER TO PETITION FOR CANCELLATION

Loops LLC ("Registrant") hereby Answers the Phoenix Trading, Inc., ("Petitioners") Petition for Cancellation as follows:

1. As to the first paragraph, Registrant admits the allegation is correct upon information and belief.

2. Registrant admits that it owns certain trademark rights and has registered such with the United States Patent and Trademark Office to include Registration Nos.: 3,424,838, 3,430,304, and 3,430,305. Further, Registrant admits to the other allegations contained in paragraph 2 to include that Steven L. Kayser is the president of Loops LLC.

3. Registrant views the allegations contained in paragraph 3 as entirely immaterial to the United States Trademark Law, and also to any other state or federal law.

1 4. Registrant steadfastly denies this allegation.

2 5. Registrant denies the allegation contained in paragraph 5.

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4 **ANSWER TO FIRST CLAIM FOR CANCELLATION**

5 **(Mark: "Designed for Prison Safety," Reg. No. 3,424,838)**

6 6. Registrant confirms answers to allegations initially set forth in paragraphs 1
7 through 5.

8 7. The allegations contained in paragraph 7 are admitted.

9 8. Registrant is without sufficient knowledge or information to form a belief as to the
10 allegations contained in paragraph 8.

11 9. Upon information and belief, Registrant regards these allegations as true.

12 10. Registrant is without sufficient knowledge or information to form a belief as to the
13 allegations contained in paragraph 10..

14 11. Registrant is without sufficient knowledge or information to form a belief as to the
15 allegations contained in paragraph 11, and on at least that basis, denies them. Registrant
16 respectfully answers that U.S. trademark rights flow from use with the exception of the so called
17 "1(b) application," (15 U.S.C. §1051(b)), and also with exception of any foreign treaties,
18 conventions, and protocols, that are not applicable in the present matter. Through extensive and
19 continuous use, the subject trademark, "Designed for Prison Safety," has become distinctive to the
20 Registrant as a source identifier. Registrant further answers that these allegations are entirely
21 immaterial to the United States Trademark Law, and also to any other state or federal law.

22 12. Registrant denies the allegations contained in paragraph 12 of the Petition to
23 Cancel.

24 13. Registrant denies the allegations contained in paragraph 13 of the Petition to
25 Cancel.

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2 14. In paragraph 14, Petitioners merely recite federal statute as to why a mark is not
3 registerable on the Principal Register pursuant to Section 2(e)(1). However, Section 2 is not
4 applicable to marks registerable to the Supplemental Register. Moreover, Section 2(e)(1) is
5 expressly exempted to marks that have acquired distinctiveness as set forth in Section 2(f).
6 Petitioners appear to allege that the subject mark is registered on the Principal Register which it is
7 not.

8 15. The language of paragraph 15 is inapplicable to marks registerable on the
9 Supplemental Register and also to marks that have secondary meaning.

10 16. The language of paragraph 16 is inapplicable to marks registerable on the
11 Supplemental Register and also to marks that have secondary meaning. Registrant denies the
12 allegation that a motion is currently pending to add New York City to the Federal District Court
13 Action.

14 17. The language of paragraph 17 is inapplicable to marks registerable on the
15 Supplemental Register and also to marks that have secondary meaning.

16 18. Registrant denies that Petitioners are entitled to cancellation of U.S. Trademark
17 Registration No. 3,424,838.

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19 **ANSWER TO SECOND CLAIM FOR CANCELLATION**

20 **(Mark: "Trade Dress Registration," Reg. No. 3,430,304)**

21 19. Registrant confirms answers to allegations initially set forth in paragraphs 1
22 through 5.

23 20. Registrant denies ownership of U.S. Trademark Reg. No. 3,424,304, however
24 admits to ownership of U.S. Trademark Reg. No. 3,430,304. Registrant admits that the subject
25 mark ("304 mark") is directed to a three-dimensional overall appearance of a toothbrush;
26 however Registrant denies that a flexible handled toothbrush is a feature of the mark.

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1 21. Registrant respectfully answers that the '304 mark comprises elements that further
2 comprise sub-elements that may also have additional sub-elements thereto. If an element is
3 functional, then it will include one or more sub-elements that are not functional to make it eligible
4 for trade dress protection. Registrant admits that a toothbrush is a functional item however the
5 three dimensional overall appearance of a toothbrush is not functional.

6 22. U.S. Pat. No. 7,334,286 is admittedly owned by Registrant.

7 23. Registrant respectfully answers by stating that a U.S. utility patent may comprise
8 elements that may or may not be functional. These elements may further comprise sub-elements
9 that may or may not be functional. Petitioners appear to believe that if language appears in a
10 claim, that this is somehow an admission that this language must an admission of functionality in
11 order to be awarded the patent grant. However there exists no requirement in The Patent Act or
12 The Patent Rules that all elements in a claim be functional elements. Conversely, the
13 requirements for patentability are set forth in §§ 101, 102, 103, and 112 of The Patent Act
14 wherein utility patent protection is basically available for useful articles different than those that
15 came before it. The claim language is merely the patentee circumscribing his or her right to
16 exclude others. Petitioners appear to suggest that the mere presence of claim language is an
17 admission that everything contained therein is functional; and further Petitioners apparently have
18 used this as basis to make bold allegations that Fraud on the U.S. Patent and Trademark Office
19 has been committed wherever similar language is present in a utility patent and in a trade dress
20 registration.

21 24. For reasons stated herein, Registrant denies the allegations set forth in paragraph
22 24.

23 25. Registrant denies that Petitioners are entitled to cancellation of U.S. Trademark
24 Registration No. 3,430,304.

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1 **ANSWER TO THIRD CLAIM FOR CANCELLATION**

2 **(Mark: "Trade Dress Registration," Reg. No. 3,430,304)**

3 26. Registrant confirms answers to allegations initially set forth in paragraphs 1
4 through 5.

5 27. The allegations made in paragraph 27 are admitted as true.

6 28. These allegations are fiercely denied. As a factual matter, no statements or
7 assertions were made by Registrant or Registrant's representative at the time, Mr. Bernard L.
8 Kleinke Esquire, regarding registerability the trade dress according to the trademark prosecution
9 history. Also as stated herein, Petitioners also misconstrue the U.S. patent laws by alleging that
10 only functional aspects of a toothbrush are properly the subject of a utility patent.

11 29. Registrant denies the allegations set forth in paragraph 29.

12 30. These allegations are immaterial to the United States Trademark Law, and also to
13 any other state or federal law.

14 31. This allegation is fiercely denied.

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16 **ANSWER TO FOURTH CLAIM FOR CANCELLATION**

17 **(Mark: "Trade Dress Registration," Reg. No. 3,430,305)**

18 32. Registrant denies ownership of U.S. Trademark Reg. No. 3,424,305, however
19 admits to ownership of U.S. Trademark Reg. No. 3,430,305.

20 33. Registrant confirms answers to allegations initially set forth in paragraphs 1
21 through 5.

22 34. Generally, Registrant admits the allegations; however the property right is to
23 specific arrangement(s) of dot relief pattern.

24 35. Generally, the allegations are correct; however, the entire claim setting forth the
25 specific arrangements of dot patterns should be viewed.

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1 36. Registrant answers by stating the Petitioners misconstrue the U.S. Patent Law by
2 suggesting that structure having only functional aspects are the proper subject of utility patent
3 protection. Registrant denies that any specific arrangement of dot patterns could have any relation
4 to functionality.

5 37. Registrant denies any relevance of the cited patent specification and/or claims to
6 the present matter.

7 38. Registrant steadfastly denies these allegations.

8 39. Registrant denies that Petitioners are entitled to any cancellation.

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10 **ANSWER TO FIFTH CLAIM FOR CANCELLATION**

11 **(Mark: "Trade Dress Registration," Reg. No. 3,430,305)**

12 40. Registrant confirms answers to allegations initially set forth in paragraphs 1
13 through 5.

14 41. The allegations made in paragraph 41 are admitted as true.

15 42. These allegations are fiercely denied. As a factual matter, no statements or
16 assertions were made by Registrant or Registrant's representative at the time, Mr. Bernard L.
17 Kleinke Esquire, regarding registerability the trade dress according to the trademark prosecution
18 history. Also as stated herein, Petitioners also misconstrue the U.S. patent laws by alleging that
19 only functional aspects of a toothbrush are properly the subject of a utility patent.

20 43. Registrant denies the allegations set forth in paragraph 43.

21 44. These allegations are immaterial to the United States Trademark Law, and also to
22 any other state or federal law.

23 45. Registrant denies that Petitioners are entitled to any cancellation.

24 46 Registrant denies that Petitioners are entitled to cancellation of any trademark
25 federal registrations herein.

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1 **AFIRMATIVE DEFENSES**

2 47. Registrant reserves the right to assert any affirmative defenses as additional
3 information becomes available.

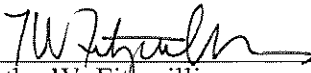
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DATED: December 30, 2009

LEWIS KOHN & FITZWILLIAM
LIMITED LIABILITY PARTNERSHIP

6
7 By:


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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being electronically transmitted to the Patent and Trademark Office on December 30, 2009.

By: /kari moyer-henry/

Kari Moyer-Henry

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing

ANSWER TO PETITION FOR CANCELLATION

has been served on counsel for Petitioner Phoenix Trading, Inc., dba Amercare Products Inc. by first class mail, postage prepaid to:

Rick Klingbeil
RICK KLINGBEIL, PC
520 SW Sixth Avenue
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Portland, Oregon 97204

Date: December 30, 2009

By: /kari moyer-henry/
Kari Moyer-Henry